

REMARKS

I. Amendments to the Specification and Claims

In the communication of June 11, 2008, the Office noted that whereas the specification refers to position 72 of SEQ ID NO: 12 as corresponding to position 115 of the HBV S antigen sequence, it appears that Applicant in fact intended to refer to position 73 of SEQ ID NO: 12. (Detailed Action at page 2.) Applicant agrees with the Office and, as suggested by the Office, accordingly amends the specification, as well as claims 28 and 31. Applicant thanks the Examiner for bringing this inadvertent typographical error to Applicant's attention.

One of ordinary skill in the art should recognize, as the Office has, that the instant amendments do not add new matter to the application. For example, one of ordinary skill in the art should recognize that the HBV S antigen gene positions 120, 154, 164, and 181 align with the corresponding glutamine 78, leucine 112, valine 122, and arginine 139 of SEQ ID NO:12. To maintain that alignment, position 115 of the HBV S antigen gene sequence must align with position 73 of SEQ ID NO:12, and not with position 72. That is evident from the sequence listing, as the Office has noted.

Claims 33 and 40 are also amended to correct other typographical errors.

Applicant respectfully requests the entry of these amendments.

II. Restriction and Election Requirement

In the restriction requirement dated June 11, 2008, the Office requires restriction, under PCT Rule 13.1 between:

Group I - Claims 24-35, 40 (in part), 42, "drawn to an HBV peptide and a first method of use;"

Group II - Claims 36-38, 40 (in part), and 41, "drawn to an anti-HBV antibody and a first method of use;"

Group III - Claim 39, "drawn to an antiidiotypic antibody representing an amino acid of HBsAg;"

Group IV - Claim 40 (in part), "drawn to an oligonucleotide encoding an HBV polypeptide;" and

Group V - Claim 40 (in part), "drawn to a combination of at least 2 of an HBV peptide, oligonucleotide, and/or an anti-HBC antibody."

Applicant provisionally elects, with traverse, to prosecute Group I, claims 24-35, 40, and 42.

The Office also requires an election of species, and an identification of the claims encompassing the election, under PCT Rule 13.1. More specifically, for any of Groups I-IV, if elected, the Office requires Applicant to elect one of the following peptides:

(a) SEQ ID NO: 19 (inclusive of SEQ ID NOs: 12-19) (claims 24-27, 29, 37),

(b) SEQ ID NO: 22 (inclusive of SEQ ID NOs: 12-15, 18, and 20-22) (claims 24-27, 29, 37), or

(c) one residue, or a combination of residues, from those identified in claims 28 and/or 31.

Applicant provisionally elects, with traverse, to prosecute a combination of residues comprising an oligopeptide or polypeptide comprising at least 5 consecutive

amino acids from SEQ ID NO:12 and comprising the sequence TRTST, which spans amino acid positions 72 to 76. All of claims 29-42 encompass this elected species.

Applicant traverses this restriction and election of species requirement because all of the claims are “so linked as to form a single general inventive concept” according to PCT Rule 13.1, and because claims 24-42 all contain “the same or corresponding special technical features” under PCT Rule 13.2. Specifically, all of those claims share the technical feature of SEQ ID NO:12, and therefore possess the required technical relationship for unity of invention. Accordingly, Applicant respectfully submits that examining all the claims together would not be improper, nor would it impose a serious burden, and request that the new restriction requirement and corresponding species election be withdrawn.

Moreover, each of claims 36-41, representing Groups II-V, is a dependent claim, and each depends from claims within the elected Group I. According to PCT Rule 13.4 and the policy of PCT Annex A of the M.P.E.P., at Part I, Section (c)(i), dependent claims that contain all of the features of the independent claims should be included in the same group, even if the dependent claims contain a further invention. Claims 36-41 each satisfy that policy as they rely upon the oligopeptides and polypeptides claimed in claims 24, 26, 28, 29, and 31 of Group I. Furthermore, if the oligopeptides and polypeptides of claims 24, 26, 28, 29, and 31 are novel and nonobvious, it follows that their antibodies would also be novel and nonobvious, as would kits and methods making use of them. Thus, at the very least, Applicant requests the Office to rejoin all of claims 36-41 to the application upon allowance of the subject matter of elected Group I.

Applicant also notes that it is the Office's general policy that "[i]f the search and examination of the entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (M.P.E.P. § 803; emphasis added.). In this case, there is no serious burden on the Office in examining all of the instant claims together because they all incorporate the subject matter of Group I. Because all of the claims of Groups II-V are dependent on claims in Group I, a search based on the subject matter of Group I would be sufficient for all of Groups II-V as well.

Applicant also submits that the election requirement is not necessary as a search may be made on the overall scope of claims 24-35, 40, and 42 without undue burden. For example, each of SEQ ID NOS:13 through 22, presented at pages 32-33 of the application text as filed are sequences that fall within the boundaries of the elected SEQ ID NO.:12. In any event, Applicant expects that once the Office finds the elected species novel and nonobvious, the Office will continue the search under its policy of M.P.E.P. § 803.02.

Finally, if the Office chooses to maintain the election requirement, Applicant expects the Office to continue to examine the full scope of the claimed subject matter to the extent necessary to determine the full scope of the patentability thereof, *i.e.*, extending the search to the non-elected species, in accordance with 37 C.F.R. § 1.141.

Please grant any extensions of time required to enter this response and charge
any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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